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ABSTRACT

A new conceptualization of the curriculum field is offered that is based on an analogy with the field of law. The conceptualization is able to account for the existence in curriculum of a variety of differing normative curriculum theories. Two theories of law (natural law and legal positivism) are described and shown to have exact counterparts in curriculum. Metaphysical principles underlying prescriptions for the practice of curriculum development are outlined and the dangers of polar positions demonstrated. The study shows how many controversies of the curriculum field are rooted in long traditions of scholarship. (Author/MLF)

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CURRICULUM AND LAW: AN ELABORATION OF THE ANALOGY*

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> As things are, there is disagreement about the subjects. For mankind are by no means agreed about the things to be taught, whether we look to virtue or the best life. Neither is it clear whether education is more concerned with intellectual or moral virtue. The existing practice is perplexing; no one knows on what principle we should proceed--should the useful in life, or should virtue, or should the higher knowledge, be the aim of our training; all three opinions have been entertained. Again, about the means there is no agreement; for different persons, starting with different ideas about the nature of virtue, naturally disagree about the practice of it.
>
> Aristotle

I

PROBLEMS OF CURRICULUM

Dispute, it would appear, is characteristic of the curriculum enterprise. There are probably few areas of human activity in which dispute is so pervasive, is indulged in by such a broad range of persons, and is perpetuated, despite lack of apparent progress, from age to age. Certainly, some disputes are trivial or turn out to be so when viewed with the advantage of hindsight. Some disputes that have preoccupied curriculum practitioners at one time no longer hold their attention today. Still others appear to have achieved resolution by one means or another. But even after all these are eliminated, the bread-and-

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butter issues of the curriculum remain issues of controversy.

This paper is focussed on these fundamental disputes of the field, in the hope that, by re-viewing in a new light the ways in which they have been addressed, both the nature of one of the central problems of curriculum and its relationship to larger issues that have engaged mankind throughout the ages will become clearer. An appropriate starting point is therefore a closer examination of the three characteristics of curriculum dispute already identified: its pervasiveness, its broad range of participants, and its endurance.

The issues that concerned Aristotle are still prime topics of curriculum debate today. What should be the aims of education? Which subjects should children be taught? What methods of teaching are the best? And, on a level once removed from these but essential to all of them: "On what principle should we proceed?" Of course, the answer to this latter question has the potential to short-circuit much of the debate over the former ones. If, for example, it were established that the needs of society were to constitute the pre-eminent principle by which educational objectives should be selected, then empirical assessments of those needs could furnish answers to several of the practical questions concerning what to teach. Conversely, conflict over the practical questions of what and how to teach can frequently be rooted in disagreement over the principles involved. The pervasiveness of dispute in curriculum is thus partly a result of the way in which the questions are interlocked in a complex network or pattern. Recognizing the existence of such a network or pattern does not, of itself, provide answers to the questions. It does,

however, assist in identifying major issues of principle and seeing them in the broader context of corresponding issues raised in other practical enterprises.

Second, the range of persons characteristically engaged in curriculum dispute is unusually broad. Since the planning of curricula is such a complex process, it is not surprising that practitioners argue over the many technical problems involved. Issues such as the reading level required by students to understand a particular textbook, the most appropriate age for students to begin learning a second language if they are to become bilingual, ways of motivating adolescents, are among the commonplace ones for professional educators to debate. But if curriculum dispute arose purely from such technical problems, then experts would be the only persons to engage in it. The problems of computer design, for example, are no more complex than those of curriculum planning; yet the discussion of them is largely confined to those practitioners having expertise in that field. There is no elaborate political superstructure such as exists in education to ensure that members of the wider public are able to participate. The key difference, of course, is that the problems of curriculum are not merely technical ones; they involve choices among deeply rooted values. Furthermore, the consequences of these choices affect every child exposed to the resulting curriculum. Thus it is no surprise that the layman insists on expressing his view on many of the issues at stake, and the channels for this participation are deliberately made available to him: his elected representatives, his local newspapers, parent-teacher associations, and so on. The disputes of the curriculum

enterprise are therefore both technical and political, and this combination adds another dimension to the complexity of the field.

Disputes in curriculum are not only interlocked in a complex network and engaged in by both experts and lay persons; they seem to be timeless in their relevance. It is possible to trace through the history of other fields the recognition and subsequent elimination of one or another ground for dispute in that field. In medicine, for example, the work of Koch and Pasteur in recognizing the relationship between the incidence of certain diseases and the presence of corresponding bacteria paved the way for the virtually total eradication of those diseases. The disputes over the origin and cure of the diseases were therefore at an end. Similar accounts may be discovered in other practical fields; not so, it would appear, in curriculum. Here, the disputes that concerned Aristotle and his contemporaries are still strikingly topical today.

Such an observation as this is, of course, open to a variety of alternative interpretations. One is that curriculum practitioners are none too intelligent or diligent, and that the field, in consequence, is inadequate for dealing with its problems. Some of the literature of the curriculum field itself would suggest there are practitioners who would take such a view of themselves. Another interpretation is that curriculum practitioners know what they should do, that knowledge adequate for dealing with the problems does indeed exist, but that the sloth or stubbornness of the educators prevents significant change from taking place. One senses that, from time to time, such a view is popular among members of the general public. The third and, in my

view, preferred interpretation of the enduring quality of curriculum dispute is that, ultimately, the questions involved may not have answers in any usual sense of that term. The dilemma that remains is that even if answers do not exist, education must go on. Curriculum disputes must be resolved in practice, even if the questions giving rise to the disputes never receive definitive answers. This third characteristic of curriculum dispute thus imposes a peculiar pressure on the persons involved: defensible resolution is demanded daily; yet the final answer seems as far away as ever. A field that can work with that pressure is not intellectually weak-kneed or lazy; it is struggling against extraordinary obstacles.

This has not been an attempt to analyse exhaustively all the characteristics of curriculum dispute. However, consideration of these three alone suggests that, underlying much of the dispute that takes place in the field, there is a fundamentally intractable problem. In order to clarify this problem further, it is helpful to reflect briefly on the role of curriculum "theory" in the operation of the field.

In a functional analysis of what has traditionally passed for curriculum theory, Macdonald (1971) has identified three groups of curriculum theorizers. "By far the largest group," he writes, "sees theory as a guiding framework for applied curriculum development and research" (p. 196). Such a prescriptive or normative function of curriculum theory is echoed by Hirst (1963-64), who contrasts this usage with that found in the field of science.

> . . . the theories of science and the theories of practical activities are radically different in character because they perform quite different functions, they are constructed to do different jobs. In the case of the empirical sciences, a theory is a body of statements that have been subjected to empirical tests and which express our understanding of certain aspects of the physical world. Such tested theories are the objects, the end products of scientific investigation, they are the conclusions of the pursuit of knowledge. Where, however, a practical activity like education is concerned, the place of theory is totally different. It is not the end product of the pursuit, but rather is constructed to determine and guide the activity. The function of the theory is to determine precisely what shall and what shall not be done, say, in education. [pp. 59-60]

If curriculum theories provide "frameworks" for guiding practitioners, for determining "what shall be done," then they must attend to the problems of concern to the practitioners of the field. At the very least, they must provide guidance concerning how to deal with those problems. Theories, then, in practical areas such as curriculum are procedural rather than substantive. They have to do with problems of design and construction rather than directly with the content. They prescribe ways of using knowledge--knowledge, that is, about children, about society, about knowledge itself, and so on--rather than contribute to such knowledge directly.[1]

The problem of how we use knowledge in the prescription of practical activities is crucial to curriculum, as it is to other practical fields. The question may be phrased more specifically as follows: What is the relationship between man's accumulated knowledge and the curricula to which he exposes his children? Such a question has significance, as we have seen, for both practitioner and theorist. On the one hand, it

underlies practitioners' desire to know "on which principle to proceed." On the other, it is central in theorists' attempts to establish a body of coherent, generalizable, yet usable knowledge for the enterprise. It thus pervades every aspect of the curriculum enterprise; it gives rise to dispute by all who are involved; and it is enduring in its relevance. It would appear to qualify as one of the central issues of the field, if not the central issue.[2]

The task of this paper is to take a fresh look at the problem and the range of ways in which it has been addressed by curriculum theorists. That it has given rise to dispute is evident from the literature of the field during recent years. Consider, for example, the following two statements:[3]

> The field of curriculum is moribund . . . [It] has reached this unhappy state by inveterate, unexamined, and mistaken reliance on theory. [Schwab 1970, p. 1]

> Substantial improvement in educational practices . . . [is] not likely to occur without a workable theory of education and without the new educational practices that can be derived from such a theory. This theory must have at its center a model of human learning. [Novak 1977, p. 17]

These are but two of a continuum of possible approaches to the resolution of the central problem that has been identified. Both authors, as is clear from a close reading of subsequent sections of their work, use the terms "theory" and "model" to refer to the theories of psychology, sociology, and other sciences. The views concerning the potential of such knowledge to influence curriculum practice are thus strikingly different. In the one case (Schwab), "theoretical constructions" are held to be "in the main, ill-fitted and inappropriate to problems of

actual teaching and learning" (p. 1). In the other (Novak), it is argued that "theory development, experimentation, and the development of interpretive models are needed and can be valuable to the advancement of educational practice" (p. 20). Both theorist and practitioner can only respond, "on what principle should we proceed?"

II

THEORIES OF LAW

Curriculum is not the only enterprise faced with such a dilemma, and the framework to be used in this paper for analyzing the responses of curriculum theorists is drawn from the field of law. Before embarking on an elaboration of the framework itself, I shall consider briefly some of the issues of recurrent interest to legal theorists. This is intended to serve two purposes: to provide a conceptual context for the development of the analytic framework; and also to justify the use in a curriculum paper of an analogy with law.

Legal theory has long been preoccupied with the question, "What is law?" In his well-known book, The Concept of Law, H. L. A. Hart (1961) demonstrates that speculation about this question over many years "has centred almost continuously upon a few principal issues" (p. 6). He goes on to detail the following three as being of central concern to legal theorists:

> How does law differ from and how is it related to orders backed by threats? How does legal obligation differ from, and how is it related to, moral obligation? What are rules, and to what extent is law an affair of rules? [p. 13]

These questions are of substantive importance in later sections of this paper. For the present, however, it is interesting to note Hart's comment (p. 16) that the elusiveness of a formal, concise definition of law is, in his view, a consequence of the wide difference between, and the fundamental nature of, these recurrent issues.[4]

More importantly, I would argue that the recurrent issues of legal theory detailed by Hart, taken together, represent a problem exactly parallel to the one identified here as central to curriculum theory. The parallel emerges most clearly if one considers the question raised by the second of Hart's trio of recurrent issues: the relation of legal obligation to moral obligation. This issue forms the basis for the classic dispute between the traditions of natural law and legal positivism, though Hart acknowledges that these terms have come to be used to represent a range of positions concerning law and morals (p. 181). The fundamental assumption of natural law is of a necessary connection between valid law and moral principles (which are, ideally, determinable by rational means).

This fundamental assumption is the very point at which the tradition of natural law is most strongly challenged. Legal positivism, in asserting the autonomy of law, denies the necessity of this connection and emphasizes the political rather than the rational element in law-making. It rejects the notion that laws necessarily carry moral obligation for those subject to them, preferring (in its classical form) the notion of law as a set of "orders backed by threats," or, in Hart's own formulation, as a system of "rules." Man's reason is thus seen as less significant in the making of the law than his will; his knowledge

is subordinate to his desires. Thus in law, as in curriculum, the problem of the use of knowledge in the prescription of practical activities can be seen to be central.

There now follows a section of the paper in which the traditions of natural law and legal positivism are discussed in some detail. The result of such a discussion is the identification of a set of ten points over which they can be seen to take quite distinct positions. These points are summarized on page 20, and the reader already familiar with these aspects of jurisprudence may wish to pick up the argument of the paper at that point.

Natural Law[5]

From the earliest days of western civilisation, men have believed that nature (including man himself) is governed by laws. At the outset, no clear distinction was made between laws seen to be operating in the physical order and those affecting man's conduct. One can understand, therefore, how, from these roots, a sharp distinction between what "is" and what "ought to be" did not emerge as important. The lack of significance of this distinction has been a hall-mark of the natural law tradition to the present.

One of the acknowledged fathers of the natural law tradition is Aristotle. Significantly, the source of his view of man as a moral creature is, in part, The Physics, in which he outlines his view of nature (including man) in dynamic terms. Kinesis (tr. change and motion) is defined by him as the "fulfillment of what exists potentially" (201^a, 10). Man is seen as a goal-oriented creature; "Intelligent

action is for the sake of an end" (199[a], 12). The idea of man's being oriented toward goals implies a distinction between ends and means, a distinction which has been central to the natural law tradition ever since. It strongly influenced the writings of later exponents of the tradition, particularly Aquinas.

If Aristotle is seen as an origin of the tradition, equally important to its development were the Stoic philosophers that followed him. Their contribution were the ideas of the universality of human nature (and therefore of natural law) and of the necessary brotherhood of man. From the first of these ideas came the distinction between local laws (of the city-state) and universal laws, held to be valid for all mankind. The latter were regarded as the products of reason alone, and therefore as superior to local city laws. The idea of the universal law was, in fact, realised in concrete form in the Roman empire. Cicero clearly expresses the belief.

> True law is right reason in agreement with Nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrong-doing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by Senate or People, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and for all times, and there will be one master and one ruler, that is, God, over us all, for He is the author of this law, its promulgator, and its enforcing judge. [De Republica, III, xxii, 33]

This paragraph contains several of the features of the tradition that will be discussed later. At this point, the emphasis on universality and rationality can be noted. These were the heritage of the Stoic

philosophers and are still present in the tradition to some degree. Reference is also made in this paragraph to the divine "master and ruler" who authorizes the natural law. Much is to be made of this by the positivists, centuries later. The second idea derived from the Stoics is that of the brotherhood of man and thus, by a small extension, the idea of natural rights. Hinted at by the talk of universality, it is presented explicitly by Cicero elsewhere:

> No single thing is so like another, so exactly its counterpart, as all of us are to one another. . . . And so, however we may define man, a single definition will apply to us all.
> [De Legibus, I, x, 29]

Thus the idea is set forth that, in a very fundamental sense, men are to be regarded as equal in the eyes of the law. This idea has been of immense significance in the revolutionary ideals of the eighteenth century, particularly in France and in the United States of America.

For the first coherent statement of the theory of natural law, as such, one must look to Thomas Aquinas. He defined law as "ordinances of reason for the common good" (Golding 1975, p. 30). This definition encapsulates several of the key features that have already been identified. It also reemphasizes the cornerstone of the tradition: that the validity of laws is derived from their grounding on reason. This emphasis on the role of the intellect (as distinct from the will) is crucial to the appreciation of the distinction made here between the traditions of natural law and legal positivism. Lawmaking, according to the former, is a purposive activity in which laws are issued to enable persons to attain desirable ends.

Two significant points follow from this conceptualization of the lawmaking enterprise. First, it is reasonable to expect local variations in laws as they apply to varying social, economic, and historical circum-

stances. The theory of natural law does not prescribe a rigid, monolithic, set of legal regulations to be applied in an invariant way throughout time and place. It is the ends of mankind which are held to be natural and thus invariant; the locally agreed-upon policies and regulations to assist in men's attainment of those ends will surely vary as the men themselves and their circumstances vary. Such reasoning is seen as being the obligation of the lawmaker. But the object of the law--the "common good"--is beyond argument.

The second point follows from the first. Not only is reason to be used in selecting the most appropriate means for the attainment of the ends, reason is also required in the common search for the nature of the desirable ends for man. This claim is clearly more controversial than the first, and it has undergone much modification and qualification over the years. Aquinas developed the Aristotelian notion of the "common good" by arguing the necessity of social cooperation and thus (logically) for the need for prohibitions against murder, theft, rape, and other "anti-social acts." He, unlike his pre-Socratic forbears, distinguished between natural law, in the sense used here, and laws of nature, of the type generated by scientists in generalizing from their observations. He insisted, however, on a close connection between natural law--what men ought to do--and human nature--the way men are. It follows, then, that one may better determine what the content of the law should be by developing one's understanding of the nature of man.

From Aquinas, the orthodox Catholic theologian, the movement of the tradition has been one of increasing secularisation. Hugo Grotius (a Dutchman of the early seventeenth century and considered by many to be the founder of modern natural law theory) made the significant

statement that natural law would retain its validity even if God did not exist (d'Entrèves 1970, p. 71). This statement, a remarkable one for 1625, marked the beginning of the break in the hitherto necessary link between law and theolcgy. It provided a clear move away from the dependence of natural law on divine fiat and towards a reliance on man's intuitive reason. This move reached a climax in statements such as the Declaration of Independence.

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by the Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

The law that grew from such words was a secular law, based on reason. To be sure, the existence of God is not brought into question by the Declaration, but the "truths" are not handed down by Him; they are the product of man's unaided reason. The Declaration could survive the "death of God." Indeed, some would say that it has already done so.

From the pinnacle reached in the eighteenth century and represented by the French and American revolutions, the tradition of natural law has been in decline. The objections raised by the legal positivists (to be examined here presently) proved to be devastating in their effects. In recent years, however, there has been a marked resurgence of interest and belief in the tradition. This has resulted, in part, from the now demonstrated inadequacies of the positivist position, which will become clear in the following section.

Modern natural law theorists hold variously to a broad range of beliefs. d'Entrèves, himself a natural law theorist has identified three groups, each of which can only be briefly mentioned here. The first group calls itself ontological. It refuses the distinction between "is" and "ought" and claims that there is a fundamental

"order of reality" in which moral right is grounded and from which laws must derive their validity. Such a view has been appropriately described as "neo-Thomist" (d'Entrèves 1970, p. 177). The second group is as modern as the first is ancient; it is called technological. This group maintains that there are criteria by which valid law can both be determined and evaluated. It thus emphasizes a "process" approach in which the procedures including the criteria for evaluation are rationally determinable while the content or substance of the law may not be. The third group, d'Entrèves calls deontological; it asserts "that there are certain principles or values related to law, and that these principles are relevant to its existence" (p. 178). This means that if a legal system can be said to exist at all, then it must embody a minimum content established by these principles.

We are now in a position to summarise the basic principles of the natural law tradition. It should be noted that the summary (see Table 1 on page 20) includes statements that have been shown here to be associated with the tradition at some time. It is not implied that every adherent of the tradition would have accepted each and every statement. The ten statements, taken together, are intended to be a fair representation of the tradition, however.

Legal Positivism

The beliefs associated with the natural law tradition, although popular in Europe and the U.S., were never entirely accepted in England. Ideas concerning the universal "rights of man", for example, had to a large extent already been enshrined in English common law and the need for a statement of such rights was never seen as being necessary. It is therefore not surprising that the challange to natural law

came from England. Nor, given the intellectual climate of the late eighteenth and early nineteenth centuries in England, is it surprising that the form that the challange took was a movement to put law onto a more empirical basis. It was part of a broader movement led by such men as John Locke, Jeremy Bentham, and David Hume to reorient the philosophy of the day to fit with the flourishing new physical sciences.

Hume's contribution to the issues of concern here was the insistence on a clear distinction between normative propositions, such as moral injunctions, and factual statements, which were open to empirical verification. The former, he pointed out, could not logically be derived from the latter; to do so was to commit the "naturalistic fallacy." Such a statement presented a clear and open challange to the doctrines of the natural law tradition. The gulf that began to open between them remained a wide one for 150 years, and it is only recently--since the shortcomings of legal positivism have emerged--that the possibility of a reconciliation has appeared possible.

The first clear statement of the legal positivist position was written by John Austin, an English jurist, in 1832. He defined laws as "commands of the sovereign," as distinct from the natural law definition of "reasonable means for the attainment of desirable ends." Several points of interest follow from such a redefinition. First, lawmaking is seen less as a rational process and more as a willful or voluntary one.[6] Such a view is reminiscent of the definition (attributed to Justinian) which is encapsulated in the words: "What pleases the Prince has the force of law" (Golding 1975, p. 25). Second, the authority of the law is seen to derive, not from its reasonableness, but from its power to coerce. Yet another definition (also Austin's)

sees laws as "orders backed by threats." (For more discussion of this view, see Hart 1962, pp. 18 - 25.)

In denying the connection between "is" and "ought" and between the legal realm and the moral one, the positivists were obliged to find answers to some of the questions which the natural law tradition dealt with by blurring these distinctions. Such questions include: How ought one to make laws? Is there any necessary minimum content to law? What kinds of criteria exist for the evaluation of the law? What factors can properly influence laws and lawmaking? Is there such a thing as moral knowledge? What view of man is implied by the positivist position? In addressing such questions as these from the perspective of the legal positivist tradition as it has appeared over the last two hundred years, we can complete a set of statements which can represent the tradition, as we have done for the natural law tradition. Accordingly, the following discussion of legal positivism concentrates less on a systematic study of the tradition as it has unfolded in the writings of its proponents, and more on the ways in which the tradition as a whole responds to the natural law tradition, as that is represented here. The exposition thus concentrates on areas of conceptual conflict.

The issue of the existence of moral knowledge--can one <u>know</u> what is right?--lies at the heart of the division between the two traditions. As we have seen, proponents of natural law have affirmed, though in differing ways, their belief in the existence of moral knowledge. One can, at least in principle, know what is right. The positivists, by contrast, deny such a possibility, though again the denial takes various forms. In one extreme form of the tradition, the labels "right" and "wrong" are dismissed as mere expressions of emotion. A. J. Ayer, one

who holds such a view, writes: "in saying that a certain type of action is right or wrong, I am not making any factual statement, not even a statement about my own state of mind. I am merely expressing certain moral sentiments" (Ayer 1952, p. 107). Other, softer, forms of positivism, while not explicitly denying the existence of good and evil, state that man cannot know what is right. For our purposes, both come to the same thing; both regard the enterprise of lawmaking in the same way. If moral truth does not exist or is unknowable, then lawmaking cannot consist of discovering what is right for man, nor of rationally determining laws. The process must, rather, be viewed as the exercise of the will of the sovereign, or, in a democracy, of the people. This view is still valid when that will is embodied in and represented by a constituted legislative body.

A number of consequences flow from this view; these establish the key differences between legal positivism and the theory of natural law. If lawmaking is seen as the exercise of the sovereign's will, then it follows that such a will will be exercised differently by different sovereigns and differently by the same sovereign at different times. There is no reason to expect any particular uniformity of law to exist, from jurisdiction to jurisdiction, nor in any given jurisdiction from age to age. What a particular sovereign (or legislature) determines is right for that state at that time, is, by definition, right. Rightness is therefore a relative quality. Laws apply to particular circumstances, and therefore, as circumstances (such as the political climate) change, so will also the laws. There is no necessary minimum content.

In this view, man is seen, not so much as a rational creature striving toward desirable goals but as a willful one making choices on

the basis of whatever values he happens to hold. Values, to the positivist, are not in themselves good or bad. The term is a descriptive one, which is useful in explaining human actions. Different actions can be explained in terms of the different values held by the actors involved. In this way, no moral judgement is suggested. The "rightness" of a choice or decision is either a "non-issue" or else is calculated on the basis of some empirical criterion.

As has been seen, the legal positivist cannot evaluate laws by the use of moral criteria, as would the natural law theorist. Law is, to the positivist, a "closed logical system" and purely legal criteria must be employed for the evaluation of laws. Such criteria might include for example: the degree to which the law represents the consensus view of the people to whom it applies; whether the persons enacting the law were legally competent to do so; whether, in practice, the law is "effective"--do people obey it?--and so on. These criteria are internal to the legal process itself; no "higher" criteria are required.

The principles that have been shown to characterize the traditions of natural law and legal positivism and over which they differ are now summarized in Table 1 (see p. 20). In presenting such a summary, some important qualifications should be stressed. First, this has not been an attempt to analyze exhaustively all the views of all legal theorists with respect to the issue of law and morality, but only those that are regarded by jurists to represent the main historical traditions of jurisprudence. Second, this has been an analysis of these traditions simply as they concern the one issue, albeit a central one. Third and most important, this has been an attempt to relate the <u>ideas</u> represented by the two traditions, not to categorize their authors. In

Table 1 / Points of Difference Between Traditions in Law

Natural Law	Legal Positivism
1. There is a necessary connection between law and morality.	There is no necessary connection between law and morality.
2. The distinction between what is and what ought to be is highly overrated in importance.	The logical distinction between what is and what ought to be is an important one.
3. There is an intuitively knowable moral truth.	There is no (knowable) moral truth.
4. Means and ends are distinct and must be attended to separately.	Means and ends are mutually determining and must therefore be attended to together.
5. Natural law is universally applicable.	Laws are applicable only to specific situations.
6. Lawmaking is an act of the mind rather than the will.	Lawmaking is an act of the will rather than the mind.
7. The authority of the law derives from its reasonableness.	The authority of the law derives from its power to coerce.
8. The law should change in the light of new knowledge.	The law should change in the light of new desires.
9. There are rational criteria for the evaluation of laws.	There are no extra-legal criteria for the evaluation of laws.
10. The existence of a legal system requires a certain minimum content.	There is no necessary minimum content of a legal system.

the course of analysis, two positions only have been sketched from a spectrum of possible ones concerning the issue in question. These two positions can, however, orient the reader to the conceptual differences involved in the field of jurisprudence. It will be argued, in the remaining portion of this paper, that a parallel spectrum of positions can be seen to exist in the field of curriculum theory.

III

CONCEPTIONS OF CURRICULUM DEVELOPMENT

It is the central claim of this paper that the contrast seen to exist in law--between natural law and legal positivism--can provide a conceptual basis for interpreting the source of many of the disputes in the field of curriculum theory. The same qualifications apply here as have just been made concerning the analysis of theories of law; they need not therefore be repeated. Furthermore, the labels (adapted from law), "naturalistic" and "positivistic" have the potential to be misleading.[7] Reference will therefore be made to two ways in which the process of curriculum development may be conceived, as a rational process and as a political process. It is intended that these two conceptions be regarded as conceptually parallel to the two traditions of legal theory that have been discussed.

Curriculum Development: A Rational Process

The process of curriculum development is conceived in more or less rational terms by the majority of writers on this subject. This is hardly surprising when one considers the positions and backgrounds of most curriculum theorists. Theorists in curriculum typically hold academic posts at universities, have been schooled in the natural and social sciences, and are rooted in an American culture, which has, until very recently, placed an almost unbounded faith in the potential of science and technology to solve the problems of mankind.[8]

The early impact that this faith in science had on the field of curriculum has been subjected to a timely and critical review by Decker Walker (1975). He describes how it found its origin in the work

of men such as Bobbitt, Charters, and other leaders of the field some sixty years ago. Their hope, articulated in the pages of the Twenty-Sixth Yearbook of the National Society for the Study of Education (1926), was to see the practice of curriculum-making placed on a more scientific basis. They exhorted the " 'scientific study of the child' for the purpose of discovering, inventing, or choosing among educational aims and practices" (Walker 1975, p. 11). Thus science was intended to facilitate and justify the making of curricula. It was also expected to provide the means for evaluation. In Walker's words again, "No matter how exciting or innovative a curriculum might be, or who testified to its worth, its true value could be determined only by scientific measurement of its results" (p. 11). Thus the field of curriculum theory (as an independent enterprise) was born in a spirit of unbridled optimism. Knowledge could and should be applied to the problems of school curricula.

The spirit of optimism never entirely died; it has certainly become evident again in recent years. In reviewing the progress of curriculum theory over the past thirty years, Kliebard has described the 1947 conference, "Toward Improved Curriculum Theory," (Herrick and Tyler 1950), as a "milestone" which marked the "identification and legitimation of an entity called curriculum theory" (Kliebard 1977, p. 259). One might add, as a part of that milestone, the publication, in 1949, of Tyler's monograph, Basic Principles of Curriculum and Instruction; its influence has probably been even more widespread than the conference itself. In this "rationale" for curriculum development, Tyler nails down two of the most important planks in the platform of the rational conception of curriculum development. These are: (1) that curricula in schools ought to be developed in

a systematic way, i.e., by first identifying the ends to be attained and then proceeding to select the most appropriate means for the attainment of the ends; and (2) that the selection of ends or objectives is improved, even validated, by using knowledge about learners and learning, about the social milieu, and about the nature of the subject matter of schooling.

These two principles, the one procedural and the other substantive, not only correspond closely to the principles long espoused by the adherents of natural law (see Table 1); they have also dominated the development of curriculum theory in the past thirty years.

As one might expect, there have been disagreements among theorists in curriculum, both on procedural and substantive issues. Some authors have proposed variations from the series of questions suggested by Tyler (1949, p. 1). Leithwood et al. (1976), for example, prefers a model involving eleven stages, while Novak (1977) promotes the use of a model by Johnson (1967) for the the development of a "structured series of intended learning outcomes."[9] Furthermore, the intensity with which an individual view has been argued has been variable. Some, including Tyler, have been careful to remind their readers to relate what is being advocated to the conventional wisdom of the school concerning local conditions. For example, on the question of the sequence of the steps in his model, Tyler concludes: The concern of the staff, the problems already identified, the available data are all factors to consider in deciding on the initial point of attack" (p. 128). This, moderate, view may be compared to the more strident tone of Mager (1962), who writes: "I cannot emphasize too strongly the point that an instructor will function in a fog of his own making until he knows just what he wants his students to be able to do at the end of the

instruction" (p. 3). Details of the procedures are thus matters for debate--precisely what questions to ask; what is the best sequence; how important are the procedures themselves--but in all this, the principle that curriculum development is, ideally, a systematic enterprise is not an issue.

The substance of the curriculum, as might be expected, provides an even richer source of dispute among those concerned for the curricula of schools. There is not space here to review all the substantive proposals for curriculum change argued for over the years. Eisner and Vallance (1974) provide an excellent sampling of the range that exists. Four of their "conflicting conceptions" are substantive in nature (the fifth--curriculum as technology--appears to be more procedural). The four substantive conceptions all demonstrate the typical rational argument for a particular curriculum emphasis. Thus we can find that studies of learners, from the perspective of the cognitive psychologist, are used to support an argument for "curriculum as the development of cognitive processes," while studies in epistemology and the philosophical analysis of the disciplines are used to promote "curriculum as academic rationalism."

In all cases of such curriculum argument, the authority of the author is, as we say, a moral one. He is, in Peters's (1959) terms, an authority, as distinct from those who are set in authority (such as a school superintendent. The theorist rests his case on his ability to convince the practitioner rationally, rather than on any power to coerce derived from a position he holds. (Few academics, it seems, even aspire to such positions, in any case.) The case itself is characteristically made that schools should do X (some activity) because it will enable the student to attain Y (some objective) which, in turn,

is desirable because it can lead to Z (some component of an ideal of the educated man). Once practitioners accept such a piece of reasoning, most of the pressing questions of the curriculum either disappear, or else they are reduced to questions of a technical nature, which are amenable (at least, in principle) to solutions from educational research. Choice among activities, for example, is reduced to a question of which is the most "effective". The evaluation of both students and curriculum is a technical problem requiring expertise in measurement alone, and so on. Such a straightforward approach to the solution of the problems of school curricula is, without doubt, the ideal of many of the theorists of the curriculum field. It is ironic to note that, were the ideal to be realised in practice, the theorist would see the distinction between his moral authority and the legal authority melt away. The responsibility for practice could be a two-edged sword.

Curriculum Development: A Political Process

The collapsing of the concepts of moral and legal authority is anathema to the legal positivist. No less abhorrent to the curriculum practitioner is the prospect of a rational curriculum theorist being appointed to a position of responsibility in his jurisdiction. This is nothing new for educators; practitioners' mistrust of theorists is legendary and in many cases justified.[10] It is only recently, however, that an alternative conception of curriculum development, well grounded in both theory and practice, has begun to emerge which can provide a convincing explanation for such mistrust.

This alternative, called here the political conception, bears the same relationship to the rational conception as does legal positivism to natural law. Its origins are comparable to those of legal positivism

in that both arose out of concerns for the states of the respective fields as they embodied the then current rational conceptions. Legal positivism was characterised, earlier in this paper, by featuring those points at which it is at variance with natural law. It is not possible here to survey systematically all the points of difference between the rational and the political conceptions of curriculum development. Four problem areas, with which the rational conception is unable to deal adequately, must therefore serve as the basis for an outline of the alternative. These are as follows: (a) the problem of the "application" of theoretical knowledge to practical situations; (b) the problem of the resolution of value conflicts over aims; (c) the problem of the accommodation of the concept of "influences on the curriculum"; (d) the problem of the conceptualization of the processes of curriculum change in practice.

A new conception of curriculum development requires a new set of terms for its articulation, and Schwab's "language for curriculum" which he called "The Practical" serves such a purpose (Schwab 1970; 1971; 1973). One of his prime concerns is the field's inappropriate reliance on theory, particularly the theories of the behavioral sciences. He writes:

> Theory, by its very character, does not and cannot take account of all the matters which are crucial to questions of what, who, and how to teach; that is, theories cannot be applied, as principles, to the solution of problems concerning what to do with or for real individuals, small groups, or real institutions located in time and space--the subjects and clients of schooling and schools. [1970, pp. 1 - 2]

Not only is theory inappropriate to the real problems of curriculum practice, he continues, individual theories are often found to be inadequate accounts of the phenomena they seek to explain.

Given this a diagnosis of the ills of the field, even the improvement of theory--the characteristic response of the rationalist--can be seen to be inadequate. Schwab therefore directs the field to attend to "the practical, the quasi-practical, and the eclectic" (p. 2). One consequence of such a reorientation is that the determination of the curriculum for a given school situation is seen less as a theoretical inquiry than a practical deliberation. Such deliberation, writes Schwab, "must weigh alternatives and the costs and consequences against one another, and choose, not the right alternative, for there is no such thing, but the best one" (p. 36). This is language radically at odds with that of the rational conception. It is the language of the political arena, of the clash of personalities and of values, of the setting of policies, and of the pressure of influences. It is, Schwab claims, a language for curriculum.

Schwab's language is rooted in Aristotle, and it is to Aristotle that one must look to see the clear identification of curriculum as a political enterprise. He describes politics as "the master art . . . for it is this that ordains which of the sciences should be studied in a state, and which each class of citizens should learn and up to what point they should learn them" (1094^{a}, 28 - 1094^{b}, 3). It is interesting, also, to note that the words with which this paper begins are from The Politics. Curriculum is regarded by Aristotle, it would appear, as the paradigmatic case of a political enterprise.

Such a conception is entirely consistent with modern ideas about politics. David Easton's (1953) definition of politics is frequently cited today by political scientists; he calls it "the authoritative allocation of values for a society." The need to allocate values

authoritatively in curriculum, is evident, as Kirst and Walker (1971) point out in a review of curriculum policy-making. They point to the inadequate way in which the traditional (rational) conception treats the conflicts among values in curriculum. "Professional educators," they observe, "treat conflict always as conflict among ideas, never as conflict among individuals, interest groups, or factions within school system bureaucracies" (p. 481). In contrast, they describe the determination of school curricula as essentially policy-making processes.

> Throughout curriculum policy-making, political conflict is generated by the existence of competing values concerning the proper basis for deciding what to teach. The local school system and the other public agencies responsible for these decisions must allocate these competing values in some way, even though this means that some factions or interests win and others lose on any given curricular issue. The inevitability of conflicting demands, wants, and needs is responsible for the necessarily political character of curriculum policy-making, a character which cannot be avoided even by the adoption of some mathematical decision-procedure. Some legitimate authority must decide (and perhaps bargain and compromise) among the conflicting policy viewpoints. [p. 480]

This theme is picked up and examined in a British context by Jenkins and Shipman (1976). Of major importance to them, in their "introduction" to curriculum, is an understanding of the "forces that influence the curriculum" (p. 39). These, again, are concepts that belong to a political conception of curriculum development rather than to a rational one. Though curriculum writers have noted the existence of potential or actual pressure groups, such as parents' associations, their role has been characteristically understated or vaguely expressed. The reason, as Kirst and Walker point out, is that the conceptual frame of the rationalist can only perceive conflict at the level of principle. "Influences" must then be treated as "aberrations rather than normal and necessary, if not altogether desirable, aspects of public policy-making" (p. 482).

The political conception of curriculum development not only can accommodate the "problems" of applying knowledge, resolving conflicts, and living with influences; it also provides a new framework with which to analyze the processes of curriculum change as they take place in practice. Such frameworks have been used relatively little as yet, but a few examples stand out for the purposes of illustration. Reid and Walker (1975) provide a collection of studies in which the demonstrably political aspects of curriculum change are clear. Walker, himself, in an earlier study (1971b), identifies three elements of a curriculum planning project: "its platform, the deliberations of its staff, and the curriculum design it produces" (p. 11). Such elements as these are quite different from those that one might look for, if one started with a model derived from a rational conception of the process. Thus the political conception affords an improved basis for the conceptualization of the practice of curriculum development.

Through this selection from among the critiques of the rational conception of curriculum development, a somewhat crude sketch has been outlined of the political conception. The sketch is crude too because the conception itself is as yet only partially developed, as compared to the rational conception. Schwab's work is still the theoretical statement to which the conception looks for its inspiration; further elaboration is continuing. The brief treatments given to both conceptions here has required the oversimplification of the views of many and the total omission of many more. The purpose of the paper will have been served, however, if the conceptual basis for the wide gulf in curriculum theory is made clear.

IV

RESOLUTION

What, then, can curriculum theorizers learn as a result of this re-view of their field? Conclusions must, of necessity, be modest; this paper is, in some ways a beginning. The principal task of the paper has been the articulation of a problem and the demonstration of its central importance to the field. The reader must be the judge of the success of this attempt. But in one sense, therefore, the paper must end by affirming the question posed tentatively earlier: What is the relationship between the accumulated knowledge of man and the curricula to which he exposes his children? The task of curriculum theory must be to constantly focus on that question.

Perhaps one can go a little further than this, and suggest some criteria which future curriculum theories must meet if they are to advance our knowledge and practice. Kliebard (1977) provides a helpful metaphor here.

> "Ultimately, a curriculum theory provides us with a lens through which we can view the problems we must face in curriculum development. If it is a poor lens, it will obscure more than it clarifies; or, it may magnify and thereby exaggerate certain features of our problem and throw others out of focus. But if it is a good theory, it will disclose much more of what is vital to curriculum than what is visible to the naked eye. [p. 268]

What of the sets of lenses reviewed in this paper? What possible defects are contained in them that can distort our view, and what can we learn about the construction of better ones?

The history of the theories of law can again be of value in revealing some of the potential waeknesses of the two conceptions of

curriculum development. Consider, first, the theory of natural law and its counterpart, the rational conception of curriculum development. The inadequacies of both have been incisively demonstrated by the critical challanges of legal positivism and the political conception of curriculum development respectively. The form that those challanges have taken has already been outlined and need not be repeated here. What is of significance, however, is the effects that the challanges have had on the respective theories.

In law, one of the effects of the tradition of legal positivism has been the reexamination of the bases of the theory of natural law. This reexamination has resulted in the emergence, as noted earlier, of at least three distinct groups of modern natural-law theorists, whose views have taken account (though in different ways) of the critiques of the past two hundred years.

The curriculum field has yet to witness such a reformulation of its rational conception. Maybe, it has yet to recognize the challange. For the present, practitioners, whose instinctive approach to curriculum development is a rational one, must look to those sophisticated theories, which, recognizing the magnitude of the problem, avoid the temptation to provide simplistic answers. Such theories are all too few. Kliebard commends to our attention Dewey's theory of curriculum as one which "does provide us with a central principle [which] addresses itself to the question of what we ought to do when we teach children and youth" (1977, p. 267). For the future, if theories in this rational tradition are to command credibility among practitioners, they cannot be formulated as though the political conception had never been articulated.

Faith in legal positivism grew with the rise in prestige of the empirical sciences. However, the tradition has its weaknesses too, as the states of the law in Nazi Germany and in South Africa have recently demonstrated. If laws are to be understood as "orders backed by threats" and their validity determined primarily by whether they issued from a properly constituted government, then there exists no basis in law for the claim that conduct in either of the countries mentioned was or is improper. Yet many in the civilised world feel a deep revulsion against the laws of either or both of these countries. But, in law, only the tradition of natural law affords a platform from which to pass a moral condemnation on such laws. Recognition of this inherent relativism has resulted in a more sceptical acceptance of the theory of legal positivism and a growing awareness of its limitations as a completely adequate theory of law.

The same limitations are present in a political conception of curriculum development. Lindblom (1959), in writing about policy formation in complex organizations, illustrates the point only too clearly. He advocates a model for policy formulation which he calls the "method of successive limited comparisons," which, although different from Schwab's deliberation in some respects, is of the same (political) genus. As a part of his account of the method, Lindblom outlines his "test of a 'good' policy" as follows.

> Agreement on policy thus becomes the only practicable test of the policy's correctness. And for one administrator to seek to win the other over to agreement on ends as well would accomplish nothing and create quite unnecessary controversy. [p. 84]

I suspect that even the most cynical of curriculum practitioners would insist that a higher standard than this mere consensus should apply to

curriculum decisions. After all, one might easily achieve a consensus of fools over a curriculum; but would that then represent a legitimate curriculum?

A curriculum theory derived from the political conception can no more ignore the rational element in curriculum development than can one from the rational conception ignore the political element. In the past, the major advances to curriculum theory have appeared when an individual has deliberately faced this tension and has thought through it. From the rational side, Dewey addressed these issues; from the political side, Schwab has now done so. For the future, nothing less than a coming to terms with this tension between rational and political elements in curriculum will suffice.

This final section of the paper is entitled "Resolution." In some works of literature, conflicts are resolved at the conclusion. In this sense, this paper concludes by refusing the possibility of such a resolution. The practitioners and theorists of curriculum must continue to live with and reflect on the conflict that is of the essence of the field. In another sense, however, "resolution" means the stiffening of one's sense of purpose. It is in this sense, that the field is urged to resolve itself to be modest in its claims for the lenses it presently has, and bold in its efforts to construct better ones.

Notes

1. It should be clear that I am here making a distinction between theories of curriculum (such as Tyler's) and theories from other fields (such as theories of learning). There is a sense, of course, in which all theories make a contribution to knowledge. The point is that curriculum theories make a distinct contribution from those of other fields.

2. In a recent review, Short (1973) has described the field of "Knowledge production and utilization" as "a new realm of inquiry having significance for . . . education" (p. 237). Significant, it may be, but it is hardly new.

3. The use of citations from authors both in law and in curriculum is carried out for the purpose of contrasting the ideas represented, not of categorizing the authors. Thus the purpose of these two quotations is to exemplify the point being made, not to imply that Schwab and Novak are, in any sense, adversaries personally.

4. It is interesting to speculate that the preoccupation of many curriculum theorists with the parallel question, "What is curriculum?" might be the result of comparable underlying concerns.

5. This discussion draws extensively on the following sources: d'Entrèves (1970); Golding (1975); Hart (1961); and Lloyd (1964). Specific references to these texts is only provided for direct quotations.

6. The meaning of both of these words has changed in recent years. They are used here in the older sense having to do with "acts of the will."

7. The term "naturalistic" has already been used in the curriculum literature by Walker (1971a) who employed it in an entirely different way from that used here. "Positivistic" is equally open to misconstruction.

8. By way of comparison, it is interesting to note the relatively small amount of "curriculum theory" emanating from the UK.

9. Novak's use of Johnson's model is problematic in itself. Johnson claimed that, as a theorist, he is trying to "increase understanding of curricular phenomena" rather than "improving school programs" (1967, p. 127). It would appear that Novak is using it for the latter purpose.

10. Connelly and Roberts (1976), in documenting the attempt of a university curriculum department to come to grips with this problem, call it one of "practical credibility."

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